

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

NEW ENGLAND LIFE INSURANCE COMPANY,)

Plaintiff(s),

vs.

JIMMY LEE, et al.,

Defendant(s).

Case No. 2:14-cv-01797-JCM-NJK

ORDER

(Docket No. 77)

Pending before the Court is a joint motion for leave to file counterclaims, filed by Defendants John Ewing and Karin Metcalf. Docket No. 77. Plaintiff filed a response in opposition. Docket No. 79. No reply has been filed. The Court finds this matter properly resolved without a hearing. Local Rule 78-2. For the reasons stated below, the Court hereby **GRANTS** the motion.

Under Fed. R. Civ. P. 15(a), “[t]he court should freely give leave when justice so requires,” and there is a strong public policy in favor of permitting amendment. *Bowles v. Reade*, 198 F.3d 752, 757 (9th Cir. 1999). As such, the Ninth Circuit has made clear that Rule 15(a) is to be applied with “extreme liberality.” *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1051 (9th Cir. 2003). In deciding a motion for leave to amend, the court considers five factors: (1) bad faith; (2) undue delay; (3) prejudice to the opposing party; (4) futility of amendment; and (5) whether the party has previously amended the complaint. *United States v. Corinthian Colleges*, 655 F.3d 984, 995 (9th Cir. 2011). “Absent prejudice, or a strong showing of any of the remaining . . . factors, there exists a *presumption* under Rule 15(a) in favor of granting leave to amend.” *Eminence Capital*, 316 F.3d at 1052 (emphasis in original).

1 Plaintiff opposes the motion exclusively on the argument that allowing amendment would be
2 futile because the proposed counterclaims would not survive a motion to dismiss. *See* Docket No. 79
3 at 7-10. “Denial of leave to amend on this ground is rare. Ordinarily, courts will defer consideration
4 of challenges to the merits of a proposed amendment until after leave to amend is granted and the
5 amended pleading is filed.” *Netbula, LLC v. Distinct Corp.*, 212 F.R.D. 534, 539 (N.D. Cal. 2003); *see*
6 *also Steward v. CMRE Fin’l Servs., Inc.*, 2015 WL 6123202, *2 (D. Nev. Oct. 16, 2015). Deferring
7 ruling on the sufficiency of the allegations is preferred in light of the more liberal standards applicable
8 to motions to amend and the fact that the parties’ arguments are better developed through a motion to
9 dismiss. *See, e.g., In re Dynamic Random Access Memory (DRAM) Antitrust Litig.*, 536 F. Supp. 2d
10 1129, 1135-36 (N.D. Cal. 2008).

11 Accordingly, the motion for leave to amend is **GRANTED**. The proposed counterclaims shall
12 be filed on the docket within seven days of the issuance of this order.

13 IT IS SO ORDERED.

14 DATED: April 22, 2016

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18 NANCY J. KOPPE
19 United States Magistrate Judge
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